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February 2, 2011

Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Dear Assistant Secretary Darcy:

On behalf of the National Association of Flood and Stormwater Management Agencies (NAFSMA), I am writing to request your assistance to address issues that have been raised by a number of our member agencies in response to recent U.S. Army Corps of Engineers (Corps) directives concerning vegetation management guidelines for levees. Many NAFSMA members have partnered with the Corps on flood damage reduction projects or have levees that are in the Corps Rehabilitation and Inspection Program. The primary focus of these project partnerships is to protect human life and property from damages caused by flood waters. NAFSMA shares the Corps' commitment to protect public safety and greatly values the strong partnership that we have built with the Corps since our founding in 1978. We are contacting you in response to significant member concerns expressed recently about the Corps' evolving approach to vegetation management on levees and the associated variance process.

NAFSMA appreciates the work of the Corps staff and their willingness to discuss vegetation issues with our membership in various forums. We recognize this is a complex issue and that physical, hydrological, environmental, and political situations vary across the country. As an organization, it was challenging for NAFSMA to develop a consensus view among our diverse membership, but it was clear this is a significant issue for our members.

NAFSMA members have some concerns but are generally in agreement on the following:

- ETL 1110-2-571, "Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures", issued on April 10, 2009 is well written and based on good engineering and experience as applied to most situations.

February 2, 2011
Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)

Page 2

- The minimum guidelines presented in ETL 571 should apply to all new levees and existing levees that can achieve compliance within a reasonable timeframe.
- Allowing vegetation variance requests in ETL 571 is necessary and appropriate.
- The cost associated with a levee failure in financial, environmental and social terms can be enormous. The cost of rebuilding a levee structure can be easily calculated, but the social and environmental costs are very difficult to quantify.

However, NAFSMA believes the following issues have not been adequately addressed in the current ETL 1110-2-571 or the draft "Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls."

- True regional differences in hydrology, vegetation, soil conditions and flood risk management;
- Differences between proposed (future) plantings and existing vegetation which was incorporated in the project design;
- Thorough review and consideration of sound science, including analysis of the role vegetation played in causing past levee failures;
- Differences between urban or sub-urban levees and agricultural levees;
- Recognition of current environmental requirements and statutes, in particular the Endangered Species Act (and its consultation requirements) and the National Environmental Policy Act;
- Impact on the Corps' Process for the National Flood Insurance Program Levee System Evaluation and FEMA's Levee Accreditation Process (for example, there should be a distinction made between levee structural integrity and accessibility issues, with the latter not considered a basis for non-compliance or de-accreditation);
- Recognition of regional opportunities for multi-use flood control facilities;
- Significant financial implications to local economies;
- Clear and specific criteria for granting a variance.

NAFSMA appreciates the Corps' dilemma - the need to confirm a uniform and reliable level of safety with regards to vegetation management, while at the same time allowing flexibility where it is warranted. NAFSMA has members that are in compliance with ETL 571 or are in the process of coming into compliance. We also have members with well managed vegetation that are having great difficulties complying because the original design relies on the vegetation for stability and environmental compliance. There is also a need to recognize that current interpretations of environmental laws do not take into account the effect a levee failure could have on those endangered species that the law was enacted to protect.

February 2, 2011
Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)

Page 3

Also, some members have begun preparing variance requests and have found the cost to be extraordinarily high, in terms of analysis and documentation. Without clear and specific acceptance criteria (as for example, the FEMA levee accreditation process), these member agencies are forced to guess at how much analysis and reporting is sufficient to prove levee stability. Those attempting to comply by removing significant areas of vegetation are left to re-negotiate and implement costly environmental mitigation with state and federal agencies.

It is critical to note that many of these existing flood damage reduction projects were built in partnership with the Corps and turned over to the nonfederal sponsors with vegetation planted - or purposely left in-place - on or near the levees. Additionally, in some cases the Corps permitted planting of additional trees within the floodway on or near levees with full consent and approval. Requirements to maintain this vegetation were included in some accompanying Corps-drafted operations and maintenance manuals. Some of our members are now facing new operations and management requirements that conflict with regulatory requirements on flood damage reduction projects. Accordingly, we believe the Corps should bear the responsibility for compliance with these new requirements.

In many cases, communities will simply not be able to obtain permits necessary to carry out these new vegetation management requirements due to Endangered Species Act and other requirements, and could face litigation as a result of trying to comply. Although Corps Headquarters proposed a variance process in the spring of last year, our expectation is that very few agencies will qualify for a variance and that the cost associated with applying for a variance will be infeasible for many local governments and special districts.

Requiring the local sponsor to bear all costs of defending - or re-designing and re-constructing - a levee designed and built by the Corps is unreasonable. The Corps should exempt projects that were designed specifically to accommodate vegetation on or near the levees. The original General Design Memorandum produced by the Corps should be sufficient to support such exemptions. Where re-design and re-construction is necessary, the Corps should bear the costs associated with upgrading to new Corps standards.

NAFSMA urges you to delay issuance of the final Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls and to also delay strict enforcement of the vegetation management requirements in ETL 571 until adequate scientific research can be completed and peer-reviewed on this issue. In the meantime, our members advocate that you convene a small work group, involving stakeholders such as NAFSMA and others, with a reasonable short time frame to address the common problems in the technical, engineering and environmental areas.

February 2, 2011
Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)

Page 4

NAFSMA further encourages the Corps to establish regional roundtables (geographically based on the Corps' Divisions, Districts or watershed based, as appropriate) to identify regionally appropriate variance standards that comply with the national framework established by the Corps Headquarters and to address harmonization of the Corps guidance with federal environmental laws, such as NEPA, ESA, and associated consultation requirements involving other federal and state resource agencies. We also urge that the ERDC study on vegetation issues be fully vetted through these regional meetings to address regional differences. NAFSMA also strongly recommends that the Corps delegate the final decision to approve vegetation variances to the local Corps Districts, because through the annual regular and periodic inspections the Districts have the local knowledge to assess risks of vegetation to public safety.

NAFSMA would welcome further discussion with you on these critical public safety issues. Please feel free to call our Executive Director, Susan Gilson, at 202-289-8625 with any questions or to discuss this issue in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "James Fiedler". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "Fiedler".

James Fiedler
President

Cc: Steve Stockton